IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 11698 of 2004

Between:

G. Mallikarjun S/o. Ampanna
P.A.C.S., Badepally, Jadcherla Mandal, Mahaboobnagar District.

..... PETITIONER

AND

1 The Person-in-charge/Chair Person, PACS, Badepally, Badepally (post), Jadcherla Mandal, Mahaboobnagar District.
2 The District Co-Operative Officer, Mahaboobnagar, Mahaboobnagar Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly in the nature of writ of Mandamus declaring the order of 1st respondent dt. 5.7.2004 who sought to remove the petitioner from service as secretary of the 1st respondent society as illegal, arbitrary without jurisdiction and contrary to Rule 72 of APCS. Act 1964 and also contrary to circular dt. 30.4.1987 and item 2 (B) of the Bye-laws issued by the Registrar of Co-operative Societies and same may be set aside and consequently direct the respondents to continue the petitioner as secretary of 1st respondent society.

Counsel for the Petitioner:MR.S.SIVA PRASAD

Counsel for respondent No.1: Sri .N.Vasudeva Reddy

Counsel for the RespondentNo.2: GP FOR COOPERATION

The Court made the following :

O R D E R:

The petitioner questions the action of the 1st respondent in removing him from service as its Secretary, vide order, dated 05.07.2004 and seeks to set aside the same.

It is the case of the petitioner that on an allotment made by the District Collector, he joined the services of the 1st respondent Society on 20.02.2002 There after, the 1st respondent removed the services of the petitioner on the ground that there are two Secretaries working in the Society, the services of the petitioner are not required. Hence, this writ petition is filed.

The learned counsel fro the petitioner submits that when once an allotment is made by the District Collector and as the petitioner is one of the allottees, his services cannot be terminated. As the petitioner is a regular employee, G.O.Ms.No.94, dated 28.02.2004 do not apply to the case of the petitioner. If the Society is having more than one Secretary, the authorities may send back the Secretary to the allotted Society or in the existing vacancies of other Societies. Hence, the action of the 1st respondent in removing the services of the petitioner is contrary to the staffing pattern of the Society fixed under Section 116-C of the Andhra Pradesh Co-operative Societies Act. Even if any appointment is made by the Society against its staffing pattern, it is for the Society either to continue or to

retrench its employees only in accordance with the provisions of Section 116-C of the Act.

On an earlier occasion, this Court in W.P.No.3171 of 2003 and batch, dated 30.08.2004 held that as long as the appointments of the employees are made in accordance with the mandatory provisions of Section 116-C of the Act, the Society can take an independent decision either to remove or continue the services of the employee in accordance with the provisions of Section 116-C of the Act.

In view of the facts and circumstances of the case, the impugned proceedings, dated 05.07.2004 of the 1st respondent are liable to be set aside and are accordingly set aside. The respondent authorities are directed to give a reasonable opportunity to the petitioner and pass appropriate orders strictly in accordance with the provisions of Section 116-C of the Act.

The writ petition is accordingly allowed. No costs.

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V.ESWARAIAH.J

05.11.2004.

tjs

To

1 The Person-in-charge/Chair Person, PACS, Badepally, Badepally (post), Jadcherla Mandal, Mahaboobnagar District.
2 The District Co-Operative Officer, Mahaboobnagar, Mahaboobnagar Dist.

3 2 C.Cs to the G.P. for Co-operation, High Court of A.P., Hyderabad (OUT)

4 2 C.D.Copies.